

IN THE THIRD CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

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RICHARD B. ROOPER, CLERK
D.C.

STATE OF TENNESSEE, ex rel. ROBERT
E. COOPER, JR., Attorney General &
Reporter,

Plaintiff,

v.

EXPYFI, LLC, a Georgia limited liability
company, doing business as www.expyfi.com,
CREDITMAX FINANCIAL, LLC, a Georgia
limited liability company, CREDIT PHD., INC.,
a Georgia nonprofit corporation, and
ANTHONY "TONY" IRVING THOMAS aka
ANTHONY J. THOMPSON, individually
and doing business as EXPYFI, LLC,
CREDITMAX FINANCIAL, LLC, CREDIT
PHD., INC., and www.expyfi.com,

Defendants.

No. 07C3365

Judge Barbara N. Haynes

**JUDGMENT BY DEFAULT
JOINTLY AND SEVERALLY AGAINST ALL DEFENDANTS
AND FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Following a motion of the Plaintiff, State of Tennessee ("State"), by and through the Attorney General and Reporter, Robert E. Cooper, Jr. ("Attorney General") on behalf of the Division of Consumer Affairs of the Department of Commerce and Insurance ("Division") and pursuant to Tenn. R. Civ. P. 55.01 and 38.05, it is hereby **ORDERED, ADJUDGED AND DECREED** that a Default Judgment be entered jointly and severally against all of the

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Defendants who have failed to answer or otherwise respond to the State's Complaint subject to the terms contained herein. This Judgment comes following a hearing on the Plaintiff's motion which occurred on Friday, May 9, 2008 at 9:00 a.m. CDT at the Davidson County Courthouse, 1 Public Square, Nashville, Tennessee, in the Third Circuit Court of the Twentieth Judicial District.

FINDINGS OF FACT

Upon review of the record, including the State's Default Judgment Motion, the State's Complaint, the Summons and all attached Exhibits, the Court makes the following findings of fact:

1. The instant civil law enforcement proceeding was filed in this Court on November 15, 2007 alleging that the Defendants violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, by engaging in unfair or deceptive acts or practices and misrepresentations in connection with the Defendants' offering and providing of credit repair services in Tennessee. The State further alleged that the Defendants violated the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001 *et seq.*, by offering and engaging in credit services to Tennessee consumers without first registering the statutorily mandated bond fully consistent with the provisions of Tenn. Code Ann. § 47-18-1011.

2. The State filed its Complaint on November 15, 2007 and Defendant Anthony Thomas, on behalf of himself individually and as the registered agent for Defendant ExpyFi, LLC, Defendant CreditMax Financial, LLC, and Defendant Credit Phd., Inc., was personally served on November 15, 2007. Defendants Anthony Thomas, ExpyFi, LLC, CreditMax

Financial, LLC, and Credit Phd., Inc. (collectively “Defendants”) have all failed to file a response or otherwise plead to the State of Tennessee’s Complaint.

3. On November 21, 2007, after a hearing on the State’s motion at which Defendant Thomas appeared, this Court entered an Order Granting Statutory Temporary Injunction prohibiting all of the Defendants from soliciting, offering, and engaging in credit services businesses without first registering the statutorily required bond. The Court also ordered the Defendants to turn over financial accounting statements and consumer records to the State within five (5) days of the entry of the Order on November 21, 2007.

4. On December 13, 2007, after Defendants were still offering their credit services business without first registering the statutorily required bond and the Defendants failed to turn over the financial and consumer records, the State filed a Motion to Enforce Order Granting Statutory Temporary Injunction Against Defendants. The State agreed to continue this motion for a few months while attempting to resolve this matter with Defendants; however, Defendants ceased responding to the State’s attempts to communicate. Defendants also failed to respond to the State’s Motion or appear at the scheduled hearing time. On April 7, 2008, this Court held the Defendants in civil contempt and ordered that Defendants pay a civil penalty of \$4,500.00 and \$900.00 in attorneys’ fees associated with the State’s civil contempt motion.

5. None of the Defendants have filed an answer to the State’s Complaint or otherwise insisted upon a jury trial or any of the derivative rights of a jury trial afforded to them under either the Constitutions of the United States or the State of Tennessee. Pursuant to Tenn. R. Civ. P. 38.05, the Defendants have waived the right to a trial by jury by not asserting this right

within fifteen days of the last pleading raising an issue of fact. *See also Town of Nolensville v. King*, 151 S.W.3d 427, 432 (Tenn. 2004)(applying Tenn. R. Crim. P. 5(c)).

6. Defendant Anthony “Tony” Thomas has never been and is not currently registered to provide credit services in the State of Tennessee.

7. Defendant ExpyFi, LLC has never been and is not currently registered to provide credit services in the State of Tennessee.

8. Defendant CreditMax Financial, LLC has never been and is not currently registered to provide credit services in the State of Tennessee.

9. Defendant Credit Phd., Inc. has never been and is not currently registered to provide credit services in the State of Tennessee.

10. Defendant Thomas is the sole organizer and registered agent of Defendant ExpyFi, LLC, also doing business as www.expyfi.com.

11. Defendant Thomas operated and controlled the website, www.expyfi.com.

12. Defendant Thomas is the registered agent of Defendant CreditMax Financial, LLC.

13. Defendant Thomas is the sole incorporator, chief executive officer, and registered agent of Defendant Credit Phd., Inc.

14. At all times relevant hereto, Defendant Thomas has actively participated in the operation, sales, advertising and promotion of Defendants ExpyFi, LLC, CreditMax Financial, LLC, and Credit Phd., Inc.

15. Defendant Thomas, acting alone or in concert with others, has formulated, directed, controlled, has or has had the authority to control or has actively participated in the acts

and practices, including all of the unlawful conduct, alleged in the State's Complaint. At all times relevant to this lawsuit, Defendant Thomas has had the authority to stop Defendants' violations of the law.

16. In late August 2007, Defendants offered credit services when they posted signs at Interstate exit ramps in Nashville and Memphis, including the exit ramps off I-40 onto Church Street and Charlotte Avenue in downtown Nashville. These signs stated, "RAISE CREDIT SCORES to 700+ 1-800-852-8366."

17. A Google search on the Internet of 800-852-8366 resulted in this Internet link: <http://qixscore.com/forms/memapp.pdf>. Clicking on this link provided a form titled "EXPYFI CREDIT AND FINANCIAL RESTORATION Membership Application." A link to this form was also found by clicking on Member Application under "Forms" on www.expyfi.com.

18. On the home page of ExpyFi's website, located at <http://www.expyfi.com/d.cgi//home.html>, in the center of the page is a video above which states "Why ExpyFi??? Click Here To View Video." This video is a nineteen minute presentation by an individual who identifies himself as Tony Thomas. He states:

ExpyFi was started seven years ago in Marietta, Georgia. Ladies and Gentlemen, I started the company, Tony Thomas. I had less than perfect credit or should I say I had horrible credit. As a matter of fact, and I'm not too proud to share this, but my credit was so bad, I had 26 negative items on my credit profile, I was \$55,000.00 in debt, and sad to say, I was still living off my mother. Ladies and Gentlemen, no I'm not proud of that, but that was my reality. I'm here to let you know today that ExpyFi can help your situation, no matter how bleak, no matter how dismal, we can help.

19. Calls made to the telephone number listed on the signs, 800-852-8366, provided a recording in Defendant Thomas's voice that stated the following:

Hello, and thanks for calling Credit Max. If you saw a sign on the side of the road that says raise your credit scores 700+, well we can do that and so much more. I don't care if you have a bankruptcy, tax lien, civil judgment, late payment, collection, child support, or repossession, no one can help you the way Credit Max can. We have countless clients who have given testimonials that you can hear for yourself. No one can help you the way we can.

20. By calling the number, 800-852-8366, listed on the signs posted near Interstate exit ramps in Nashville and Memphis, consumers got a recording in Defendant Thomas's voice listing upcoming free seminars hosted by Defendant Thomas. These seminars were held at several locations in Tennessee, including but not limited to the East Memphis Marriott hotel, the Top of the Line Banquet Hall in Memphis, and the Holiday Inn on Broadway in Nashville.

21. At one such seminar held in Memphis on August 31, 2007, Defendant Thomas explained to attending consumers that his company was formerly called CreditMax but now called Credit Phd., and handed consumers a Credit Phd. Confidential Client Form.

22. At a seminar in Nashville on November 15, 2007, Defendant Thomas offered for sale a "credit restoration kit" with documents that had CreditMax Financial, LLC listed on them. Defendant Thomas also had twenty-one (21) consumers complete a CreditMax Financial, LLC Confidential Client Form, which listed the toll-free number, 800-852-8366, as the fax number on it, and then sold them a "credit restoration kit."

23. Defendant Thomas was the sole person operating and controlling the activities of Defendant ExpyFi, LLC, Defendant CreditMax Financial, LLC, and Defendant Credit Phd., Inc., such that all three companies were basically one and the same company for control and use by Defendant Thomas.

24. Defendants offered a link on www.expyfi.com to an ExpyFi Membership Application that stated: “A \$39 non-refundable set-up fee is required for new memberships.”

25. This ExpyFi Membership Application also provided a place for the consumer signing up for ExpyFi’s services to authorize ExpyFi to make charges to his or her credit card or make withdrawals from his or her bank checking or savings account.

26. This ExpyFi Membership Application also provided a place for the consumer to sign his or her name. Under the signature line, the application states, “I have agreed to purchase the package selected above. I understand that such services/products will be provided on a monthly basis until I cancel my membership in writing.”

27. By entering into this Membership Application contract with consumers, Defendants advertised and charged consumers up-front to provide credit repair services before any services were performed or completed.

28. The home page of www.expyfi.com stated the following:

ExpyFi specializes in helping restore credit and finances.

We are an educational company committed to
helping individuals learn the importance of
credit and financial restoration.

If you’re interested in buying a home,
refinancing, purchasing a car, etc...

No company or individual can
help you the way ExpyFi can!

29. The home page of www.expyfi.com also stated the following:

ExpyFi is the best
Crediration company known nationally!

Crediration is a combination of:

1. Credit Repair
2. Credit Restoration
3. Credit Enhancement

No company or individual can
help you the way ExpyFi can!

30. ExpyFi's website also stated:

"Regardless of your credit situation... ExpyFi can 'really' help!"
"Choose Only The Best ... ExpyFi" and
"No other company or individual can help RAISE CREDIT
SCORES the way ExpyFi can!"

31. The restoration package offered is explained as follows when clicking on
"Services" on ExpyFi's website:

Restoration Package

ExpyFi will contact the Credit agencies on your behalf,
demanding that they
Remove ALL Negative Items that are not verified as per law

ChexSystems
Checking Account
Credit Cards (Secured and Unsecured)

QixScore (QixScore will assist in helping
get your credit scores to 700 ASAP, via Education,
Information and TeleSeminars)

Exclusive TeleSeminars
Also, you will receive How To Buy a Home in 30 Days
How To Refinance Your Home
How to become a Real Estate Investor

The above information will also be taught via our Exclusive
TeleSeminars

32. Defendants offered the following information about their credit services experience when consumers clicked on the tab “Company” on www.expyfi.com:

ExpyFi is passionate about helping consumers reestablish creditworthiness and restoring finances. We believe no other company or individual can help you the way we can.

ExpyFi was started over seven years ago (December 1999). The company was started out of a need by the founder, Tony Thomas. Tony had 26 negative items on his credit profiles with Equifax, Trans Union and Experian. He was \$55,000.00 in debt. He was shown how to have “all” inaccurate, outdated, erroneous information deleted from his credit profiles and begin a new life, as a result of having his credit and finances restored.

ExpyFi has well over 30 years (combined) experience in the Credit and Financial Restoration area, offering “solutions” and “help” to those who have been turned down when trying to buy a new home, refinance your home, purchase a new vehicle, or simply have utilities turned on in your name without paying a hefty deposit.

If you're serious about restoring your credit and finances... ExpyFi can definitely help... No one can help you the way we can!

33. ExpyFi’s website also has a tab for “The Secret” which reveals the following information:

The Secret

Actually, the secret consist of two parts...

1. You don't have to remove “every” negative item from your credit profile in order to have good credit.

Your credit worthiness is not contingent on removing negative items. It’s based on developing a solid credit (middle) score.

2. Your goal is to raise your credit scores to 700 plus, and we can definitely help you.

There are a number of ways we can help you raise your credit scores to 700 plus. Our tactics and strategies are unmatched when it come to boosting credit scores rather quickly.

No other company practices Crediration, except ExpyFi!
Crediration is a combination of:

1. Getting Negative Items deleted from the credit profiles
2. Restoring the credit profile
3. Boosting all three credit scores with Equifax, Trans Union and Experian

34. The ExpyFi website listed the benefits of selecting its Crediration program on its website under "Benefits":

1. We do all the letter writing for you
2. We help you open checking accounts
3. We help you obtain credit cards
4. We educate you regarding the laws that protect you
5. We stop collectors from harrasing you at your home and job
6. We prevent collectors from putting collections on your credit profile
7. We provide live educational seminars
8. We provide teleconference calls to educate you
9. We help increase credit scores quickly
10. Our program is "better" than every other credit repair company
11. FREE Business Opportunity Web site
12. FREE Back Office Web site
13. We have propriatary software to assist in cleaning your credit

35. The video on www.expyfi.com where Defendant Thomas described their credit services offered various packages with a monthly fee. This video further described the Bronze Package or Package Number One which Defendant Thomas stated costs \$49.00 per month for individuals or \$69.00 per month for couples, the Silver Package or Package Number Two which Defendant Thomas stated costs \$79.00 per month for individuals or \$99.00 per month for couples, and the Gold Package or Package Number Three which Defendant Thomas stated costs \$99.00 per month for individuals or \$119.00 per month for couples.

36. While describing the Bronze package or Package Number One on the video, Defendant Thomas stated: “Crediration is going to help get all the negative items off your credit profiles, including bankruptcies, tax liens, civil judgments, student loans, lates, collections, child support, repossessions, foreclosures.”

37. While describing the Bronze package or Package Number One on the video, Defendant Thomas also stated: “So, ladies and gentlemen, rest assured that ExpyFi has all of the experience, the know hows, the where with alls, to help anybody in any situation.”

38. While describing the Bronze package or Package Number One on the video, Defendant Thomas also stated:

We know how to help you. We’re qualified and we’re ready to meet you right where you are. So, ladies and gentlemen, do me a favor. Don’t ever believe the lie that you have to keep items on your credit profiles for seven years, non-public records, ten years for public records. That’s a lie. And ladies and gentlemen, we’re going to show you through our expertise, how no one can help you the way ExpyFi can.

39. While describing the Bronze package on the video, Defendant Thomas further stated: “Crediration will also help to delete all the inquiries from your credit profiles.”

40. The Credit Phd. Confidential Client Form that Defendant Thomas handed out to attendees of his seminar provides the following box for “Payment Information”:

FEE:

\$49.00 INDIVIDUAL / \$69.00 COUPLE (DO IT YOURSELF / LIMITED HELP)

\$149.00 INDIVIDUAL / \$169.00 COUPLE (WE HOLD YOUR HAND)

\$495.00 (START YOUR OWN BUSINESS)

41. During one seminar using the company name Credit Phd., Defendant Thomas gave a presentation during which he alleged that he could write letters to remove certain debts from consumers' credit reports. Defendant Thomas then informed the attending consumers that for forty-nine dollars (\$49.00) he would provide the consumer with a DVD that would show him or her, step by step, how to contact creditors and credit reporting agencies to clean up his or her credit and achieve a FICA score above 700. Defendant Thomas stated that the \$49.00 fee would include regular conference calls with Defendant Thomas and on-line assistance via expyfi.com.

42. Defendant Thomas committed all of the conduct alleged in the State's complaint as part of and on behalf of his credit services businesses, ExpyFi, LLC, CreditMax Financial, LLC, and Credit Phd., Inc., including the representations and statements made on the ExpyFi website, www.expyfi.com.

CONCLUSIONS OF LAW

43. This Court has jurisdiction of the subject matter in this case and the parties pursuant to Tenn. Code Ann. § 47-18-108.

44. Venue is proper in Davidson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because it is the county where Defendants conduct, transact, or have transacted business and it is the county where the alleged unfair or deceptive acts or practices took place.

45. Defendants have engaged in credit services business in the State of Tennessee without first registering a bond fully consistent with the provisions of Tenn. Code Ann. § 47-18-1011. "Credit services business" is defined in Tenn. Code Ann. § 47-18-1002(5)(A) to mean:

any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform any of the following services in return for the payment of money or other valuable consideration:

- (i) improving a consumer's credit record, history, or rating;
- (ii) obtaining an extension of credit for a consumer; or
- (iii) providing advice or assistance to a consumer with regard to (i) or (ii) of this subdivision (5)(A).

Specifically, the Court finds that:

- (A) By charging or receiving any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, including all representations made orally or in writing, Defendants have violated Tenn. Code Ann. § 47-18-1003(1). Under Tenn. Code Ann. § 47-18-1003(1), "Full and complete performance" means fulfillment of all items listed in the contract and other solicitations or communications to consumers.
- (B) By making or using any untrue or misleading representations in the offer or sale of the services of a credit services business or engaging, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business, Defendants have violated Tenn. Code Ann. § 47-18-1003(4).
- (C) By providing, in any manner, the services of a credit services business within this state, without registering a bond consistent with the provisions of Tenn. Code Ann. § 47-18-1011, Defendants have violated Tenn. Code Ann. § 47-18-1003(6).

- (D) By removing, assisting or advising the consumer to remove or otherwise alter adverse information from the consumer's credit record which is accurate or not obsolete, Defendants have violated Tenn. Code Ann. § 47-18-1003(7).
- (E) By using a program or plan which uses or employs installment payments featuring payments charged directly to a credit card prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, Defendants have violated Tenn. Code Ann. § 47-18-1003(9).
- (F) By using contracts for services that do not include cancellation notices that conform to the requirements of the Tennessee Credit Services Businesses Act, Defendants have violated Tenn. Code Ann. § 47-18-1006.
- (G) By failing to post the statutorily mandated bond with the Tennessee Department of Commerce and Insurance before conducting business in Tennessee, Defendants have violated Tenn. Code Ann. § 47-18-1011.
- (H) Pursuant to Tenn. Code Ann. § 47-18-1010(a), all of the violations of the Tennessee Credit Services Businesses Act by Defendants constitute violations of the Tennessee Consumer Protection Act.

46. Defendants' offering and sale of credit services to consumers without posting the statutorily mandated bond with the Tennessee Department of Commerce and Insurance before conducting business in Tennessee as alleged by the State constitutes the offering of goods and/or services and trade, commerce and/or a consumer transaction as defined in Tenn. Code Ann. § 47-18-103(5), (10) and (11).

47. Defendants have engaged in trade or commerce in the State of Tennessee by offering goods or services to consumers located in whole or in part in Tennessee.

48. Defendants have violated the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, which prohibits, among other things, the commission of unfair or deceptive acts and misrepresentations in trade or commerce.

49. Defendants' unfair and deceptive acts or practices have caused ascertainable losses to at least twenty-one (21) consumers and possibly others in Tennessee.

50. Defendants have engaged in unfair acts or practices. Unfairness is not defined in the TCPA. Consistent with their obligation under Tenn. Code Ann. § 47-18-115, courts have looked to the FTC's definition of unfairness for interpretative guidance. An unfair act or practice is one that "causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." *Tucker v. Sierra Builders*, 180 S.W.3d, 109, 116-117 (2005). Consumer injury will be deemed substantial "if a relatively small harm is inflicted on a large number of consumers or if a greater harm is inflicted on a relatively small number of consumers." *Id.* at 117. A consumer injury "must be more than trivial or speculative" to be considered "substantial." *Id.* "Consumers cannot reasonably avoid injury when a merchant's sales practices unreasonably create or take advantage of an obstacle to the free exercise of consumer decision-making." *Id.* "Practices that unreasonably interfere with consumer decision-making include (1) withholding important information from consumers, (2) overt coercion, or (3) exercising undue influence over a highly susceptible class of consumers." *Id.*

51. The Court finds that the Complaint and the State's Motion for Default Judgment provide ample evidence that the Defendants engaged in acts or practices that were likely to cause substantial economic and physical injury to consumers which were unavoidable because the Defendants withheld important information, including that none of the Defendants were registered to provide credit services in Tennessee, and that some of the information and advice provided with their credit services may be inaccurate or unlawful. There are no commercial benefits to these material omissions.

52. The Court specifically finds as follows:

- (A) Defendants violated Tenn. Code Ann. § 47-18-104(a) by engaging in unfair and deceptive acts or practices affecting the conduct of any trade or commerce in Tennessee.
- (B) Defendants have violated Tenn. Code Ann. § 47-18-104(b)(5) by representing that their goods and services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have.
- (C) Defendants have violated Tenn. Code Ann. 47-18-104(b)(7) by representing that good or services including but not limited to their credit services and credit restoration kits are of a particular standard, quality or grade, when they are not.
- (D) Defendants have violated Tenn. Code Ann. § 47-18-104(b)(12) by representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law.
- (E) Defendants have violated Tenn. Code Ann. § 47-18-104(b)(27) by engaging in acts or practices which are deceptive to consumers. The TCPA contains no

definition of deception. The Court of Appeals in interpreting the TCPA has, per Tenn. Code Ann. § 47-18-115, aligned the case law definition of TCPA to the FTC Act's definition. Deception is conduct that "causes or tends to cause a consumer to believe what is false, or that misleads or tends to mislead a consumer as to a matter of fact." *Tucker*, 180 S.W.3d at 116. The Defendant has caused or tended to cause consumers to believe what is false or that misleads or tends to mislead a consumer as to a matter of fact, in offering their credit services including but not limited to making such misrepresentations that Defendants can remove all negative items from consumers' credit reports.

- (F) Defendants are jointly and severally liable. The State has named Mr. Anthony Thomas, individually, and three entities under his control, ExpyFi, LLC, CreditMax Financial, LLC, and Credit Phd., Inc., as Defendants to this lawsuit. Defendant Thomas made representations, offers, and sales of credit services during seminars offered in Tennessee by these entities and made similar representations and offers of credit services on Defendants' websites including www.expyfi.com and www.creditphd.net. The Supreme Court has stated:

[W]here two or more persons engage in a common enterprise, they are jointly liable for wrongful acts done in connection with that enterprise, at least where the enterprise is an unlawful one, in which case all are answerable for any injury done by any one of them, although the damage done was greater than was foreseen or the particular act was not contemplated or intended by them.

Huckeby v. Spangler, 521 S.W.2d 568, 574 (Tenn. 1975).

JUDGMENT

RESTITUTION

52. The State has the authority to seek restitution on behalf of consumers for ascertainable losses pursuant to Tenn. Code Ann. § 47-18-108(b)(1). “Ascertainable loss” is defined in Tenn. Code Ann. § 47-18-2102(1) as “an identifiable deprivation, detriment or injury arising from . . . any unfair, misleading or deceptive act or practice even when the precise amount of the loss is not known. Whenever a violation of this part has occurred, an ascertainable loss shall be presumed to exist.” The Court finds that consumers have suffered ascertainable losses by purchases of Defendants credit services and goods, the exact extent of which is unknown.

53. The State has not had the benefit of full discovery to receive a complete accounting of the amounts collected by Defendants through their unlawful conduct. Based on the above, IT IS HEREBY **ORDERED, ADJUDGED, AND DECREED** that Defendants are jointly and severally liable for restitution in the amount of **nine hundred seventy-eight and 00/100 dollars (\$978.00)**, including prejudgment interest compounded at 10% per annum from the date of consumer’s payment for the transaction, which is awarded to the State for each consumer who purchased Defendant’s “credit services” or other goods or services including:

- (A) Consumer S. Alexander who paid Defendants \$5.00 for credit services at a Nashville seminar on November 15, 2007;
- (B) Consumer E. Barnes who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (C) Consumer B. Blackmon who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (D) Consumer J. Coleman who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;

- (E) Consumer P. Eichel who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (F) Consumer S. Few who paid Defendants \$20.00 for credit services at a Nashville seminar on November 15, 2007;
- (G) Consumer T. Florence who paid Defendants \$20.00 for credit services at a Nashville seminar on November 15, 2007;
- (H) Consumer G. Fordham who paid Defendants \$20.00 for credit services at a Nashville seminar on November 15, 2007;
- (I) Consumer J. Jackson who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (J) Consumers A. Khayyam & T. Khayyam who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (K) Consumers J. King & M. Tidwell who paid Defendants \$99.00 for credit services at a Nashville seminar on November 15, 2007;
- (L) Consumers W. Lawrence & T. Mayhew-Lawrence who paid Defendants \$20.00 for credit services at a Nashville seminar on November 15, 2007;
- (M) Consumer A. Lewis who paid Defendants \$5.00 for credit services at a Nashville seminar on November 15, 2007;
- (N) Consumers F. Love & K. Wilson who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (O) Consumer V. Nelson who paid Defendants \$5.00 for credit services at a Nashville seminar on November 15, 2007;
- (P) Consumer P. Patton-Jones who paid Defendants \$5.00 for credit services at a Nashville seminar on November 15, 2007;
- (Q) Consumer E. Pillow who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (R) Consumer E. Smith who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;

- (S) Consumer P. Thompson who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007;
- (T) Consumer T. Thompson who paid Defendants \$69.00 for credit services at a Nashville seminar on November 15, 2007; and
- (U) Consumer S. Washington who paid Defendants \$20.00 for credit services at a Nashville seminar on November 15, 2007.

54. Taking into consideration the need for a final judgment and the lack of consumer information available, IT IS HEREBY **ORDERED, ADJUDGED, AND DECREED** that the window for restitution for a consumer to come forward with a statement and supporting documentation (*i.e.* a canceled check, a bank statement, a receipt, an affidavit, etc.) that he or she purchased goods or services from Defendants be extended until one year from the effective date of this Default Judgment. Prejudgment statutory interest is available under Tenn. Code Ann. § 47-14-123.

55. IT IS HEREBY **ORDERED, ADJUDGED, AND DECREED** that if the restitution funds are received by the State from Defendants, the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance shall distribute the restitution funds to the eligible consumers. If less than the full amount of restitution is received from Defendants, the restitution funds shall be distributed at the sole discretion of the Director of the Division of Consumer Affairs. After restitution has been distributed, the Division of Consumer Affairs may file an affidavit for costs of distributing and administering restitution to be recouped from Defendants.

56. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that if any payment to a consumer is returned as undeliverable and the Division of Consumer Affairs is

unable to locate the consumer or a consumer's check is not cashed within six months, the funds due to such consumer pursuant to a Default Judgment in this matter shall be delivered by the Division of Consumer Affairs to the Treasurer of the State of Tennessee for treatment as unclaimed property as mandated by the Tennessee Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101 *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date of one (1) year set forth in Tenn. Code Ann. § 66-29-110, covering unclaimed property held by courts, public officers and agencies.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED:

TCPA CIVIL PENALTIES

57. Based on statements made by Tennessee consumers, Defendants have committed at least twenty-one (21) violations of the Tennessee Credit Services Businesses Act and the Tennessee Consumer Protection Act. Per Tenn. Code Ann. § 47-18-1010, a violation of the Tennessee Credit Services Businesses Act constitutes a violation of the Tennessee Consumer Protection Act. Per Tenn. Code Ann. § 47-18-102, the TCPA is to be liberally construed. The Tennessee Consumer Protection Act, including its civil penalty provision, is classified as a "remedial legislation." Tenn. Code Ann. § 47-18-115.

58. Based on the similarity of Washington's civil penalty statute, Rev. Code of Washington 19.86.140, and Tenn. Code Ann. § 47-18-108(b)(3) which both contemplate civil penalties awards per violation, this Court adopts the holding of the Washington Supreme Court in *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wash. 2d 298, 553 P.2d 423 (1976) which held that civil penalties should be assessed based on each respective violation.

59. There is an absence of state case law governing which factors can be considered in assessing a remedial civil penalty under the Tennessee Consumer Protection Act. This Court adopts the analysis used by a Massachusetts court which considered the Defendant's good faith and ability to pay, the injury to the public good and the desire to eliminate the benefits derived by the unfair and deceptive practice violations; and the need to vindicate the state's authority. *Commonwealth v. AmCan Enterprises*, 47 Mass. App. Ct. 330, 712 N.E.2d 1205 (1999).

60. Defendants were not acting in good faith in making their representations. Defendants knowingly and willingly lied about being able to provide credit services in the State of Tennessee when Defendants had not posted the statutorily mandated bond with the Tennessee Department of Commerce and Insurance before conducting business in Tennessee. Furthermore, Defendants knowingly and willingly lied about the benefits and uses that consumers would receive by purchasing and using Defendants' credit services.

61. Consistent with the remedial nature of civil penalties under the Tennessee Consumer Protection Act as evidenced in Tenn. Code Ann. § 47-18-115, we must factor in the Defendants' ability to pay. Defendants' ability to pay is not fully known as a result of the Defendants' failure to fully comply with the provision to turn over financial accounting records in the Court's Order Granting Statutory Temporary Injunction and Defendants' lack of a defense to this suit.

62. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that pursuant to Tenn. Code Ann. § 47-18-108(3), the State be awarded a Tennessee Consumer Protection Act Civil Penalty in the amount of **twenty-one thousand dollars (\$21,000.00)** to be jointly and severally lodged against Defendants as a remedial civil penalty.

The Court notes that comparable awards have been given in other cases or settlements. In *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, the Supreme Court of Washington assessed a civil penalty of \$2,000 for each violation of the Act. The language of Washington's civil penalty provision within its consumer protection statute is very similar to Tennessee's. Revised Code of Washington 19.86.140 states, "Every person who violates [Washington's Consumer Protection Act] shall forfeit and pay a civil penalty of not more than two thousand dollars **for each violation**. . . ." (Emphasis added). The TCPA's civil penalty provision states, "The court may also order payment to the state of a civil penalty of not more than one thousand dollars (\$1,000) **for each violation**." (Emphasis added). Aside from the language of the statute itself, this is an appropriate remedy because of the Defendants' continuous misrepresentations regarding their ability to provide credit services in Tennessee without first posting the statutorily mandated bond with the Tennessee Department of Commerce and Insurance before conducting business in Tennessee.

PERMANENT INJUNCTION

63. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1), **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendants Anthony Thomas, ExpyFi, LLC, CreditMax Financial, LLC, and Credit Phd., Inc. and each of their officers, directors, partners, subsidiaries, affiliates, managers, parents, related entities, successors, agents, representatives, sales staff, employees, agents, successors and assigns, and other persons in active concert or participation with Defendants who receive actual notice of this Permanent Injunction Order are **permanently** enjoined from engaging, directly or indirectly, in any acts which are unlawful including the following:

- (A) Defendant shall fully comply with the Tennessee Credit Services Businesses Act;
- (B) Defendant shall fully comply with the Tennessee Consumer Protection Act of 1977;

Without limiting the scope of paragraphs (A) and (B),

- (C) Defendants shall be prohibited from soliciting, providing, advertising, promoting, or conducting seminars or presentations of any type in person, via the Internet or telephone, or otherwise offering or providing, in any manner, the services of a credit services business within this state, without first registering a bond fully consistent with the provisions of Tenn. Code Ann. § 47-18-1011;
- (D) Defendants shall be prohibited from selling, providing, performing or representing, to any person that they can or will sell, provide, or perform any of the following services in return for payment of money or other valuable consideration: (i) improving a consumer's credit record, history, or rating; (ii) obtaining an extension of credit for a consumer; or (iii) providing advice of assistance to a consumer with regard to either (i) or (ii), without first registering a bond fully consistent with the provisions of Tenn. Code Ann. § 47-18-1011;
- (E) Defendants shall be prohibited from charging or receiving any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer, including all representations made orally or in writing. Under Tenn. Code Ann. § 47-18-1003(1), "Full and complete performance" means fulfillment of all items listed in the contract and other solicitations or communications to consumers;
- (F) Defendants shall be prohibited from directly or by implication making or using any untrue or misleading representations in the offer or sale of the services of a credit services business or engaging, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit services business;
- (G) Defendants shall be prohibited from directly or by implication removing, assisting or advising the consumer to remove or otherwise alter adverse information from the consumer's credit record which is accurate or not obsolete;
- (H) Defendants shall be prohibited from using a program or plan which uses or employs installment payments featuring payments charged directly to a credit card

prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer;

- (I) Defendants shall be prohibited from enforcing any contract or other agreement for services signed by Tennessee consumers that were entered into during the period in which Defendants did not have a bond posted with the State fully consistent with the provisions of Tenn. Code Ann. § 47-18-1011 and that do not fully comply with all provisions of the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001 *et seq.*;
- (J) Defendants shall be prohibited from directly or by implication representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship approval, status, affiliation or connection that such person does not have;
- (K) Defendants shall be prohibited from directly or by implication representing that goods or services are of a particular standard, quality or grade, if they are of another;
- (L) Defendants shall be prohibited from directly or by implication representing that a consumer transaction confers or involves rights, remedies, or obligations that it does not have or involve or which are prohibited by law;
- (M) Defendants shall be prohibited from directly or by implication representing, advertising, soliciting or otherwise promoting any goods or services in any fashion that is unfair, deceptive, misleading or false to consumers;
- (N) Defendants shall be prohibited from directly or by implication engaging in any unfair, deceptive or misleading acts or practices during their sales presentations;
- (O) Defendants shall be prohibited from directly or by implication encouraging their employees or sales forces, including but not limited to telemarketers or independent contractors, to lie, misrepresent or mislead consumers in order to secure the consumer's attendance at Defendants' seminars, webcast or sales presentations;
- (P) Defendants shall be prohibited from directly or by implication encouraging and/or affirmatively instructing their employees or sales force, including but not limited to telemarketers and independent contractors, to falsify or misrepresent earnings, or otherwise provide other incorrect information in order to assist a consumer in improving his or her credit ratings and scores;

- (Q) Defendants shall be prohibited from directly or by implication using or utilizing any testimonials of persons to promote their goods or services or businesses unless the persons actually achieved the results by using Defendants' goods or services, the results are typical of most consumers, and that neither Defendants nor any other person has paid any compensation for the testimonial and Defendants fully comply with all Federal Trade Commission guidelines, rules or regulations relating to testimonials;
- (R) Defendants shall affirmatively, clearly and conspicuously disclose to a consumer if a good or service Defendants are offering for a fee can be obtained free of charge either by the consumer's own actions or by the assistance of any governmental entity;
- (S) Defendants shall be prohibited from directly or by implication representing that consumers will receive goods or services that they will not receive;
- (T) Defendants shall be prohibited from directly or by implication representing that consumers' credit ratings and/or scores will be repaired, restored, or otherwise improved by using Defendants' goods or services or business offerings, when such is not the case;
- (U) Defendants shall be prohibited from directly or by implication, in the operation of a credit services business or any other business entity, create, assist or advise a consumer to create a new credit record by using a different name, address, social security number or employee identification number;
- (V) Defendants shall be prohibited from directly or by implication, in the operation of a credit services business or any other business entity, create, assist, or advise the consumer to request that positive information be inserted or included on the consumer's credit record which is false, inaccurate or obsolete;
- (W) Defendants shall not sell, transfer or otherwise disseminate any information relating to the consumers' names, addresses, telephone numbers or any other personally identifiable information of any consumer whose purchases of Defendants' goods or services, contracts or agreements were the subject matter of this litigation to any person or entity;
- (X) Defendants shall be prohibited from directly or by implication in the operation of a credit services business or any other business entity using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement or agreement in which the buyer or prospective buyer is offered the opportunity to purchase goods or services and, in connection with the purchase,

receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if the receipt of compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

- (Y) Defendants shall be prohibited from advising or counseling consumers for a valuable consideration as to any secular laws without being first duly licensed to practice law in the State of Tennessee; and
- (Z) Defendants shall timely and fully comply and cooperate with the Attorney General's Office when information is sought pursuant to state law, regulation or rule.

GENERAL PROVISIONS

64. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that execution and/or garnishment may immediately issue for this Judgment by Default and that any amounts due and payable may be collected by execution, garnishment or other legal process, together with interest pursuant to Tenn. Code Ann. § 47-14-121 from the date of entry of this Judgment. Further, the State may obtain additional attorneys' fees and any and all costs associated with collection efforts, including but not limited to court costs, court reporting costs, and travel costs associated with any such collection efforts.

65. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the State has the right to seek Defendants' testimony under oath for the purposes of determining Defendants' financial status and to locate any assets available to the State for execution and seizure to fulfill the Defendants' monetary obligations under this Judgment by Default.

66. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that nothing in this Judgment by Default shall be construed to affect any private right of action that a consumer may hold against Defendants.

67. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the State of Tennessee has the right to test shop Defendants for the purpose of confirming compliance with this Judgment by Default and state law. These test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Defendants. Further, the State of Tennessee may record any or all aspects of their solicitations or visit(s) with Defendants in audio and/or video form without notice to Defendants. Any such sales shall be void upon notification that it was test shopping conducted by the State.

68. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that pursuant to Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Judgment by Default shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties.

69. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that upon entry of this Judgment by Default, any subsequent failure to comply with the terms hereof is a prima facie evidence of a violation of the Tennessee Consumer Protection Act.

70. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that nothing in this Judgment by Default shall be construed as relieving the Defendants of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment by Default be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

71. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that this Judgment by Default may only be enforced by the Court or the parties hereto.


ATTORNEYS' FEES AND COSTS

72. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and (b)(4), the State may obtain costs and fees associated with the investigation and prosecution of this action under the TCPA. Based on the affidavits contained in Collective Exhibit B to the State's Motion for Default Judgment, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that attorneys' fees and costs in the amount of **fifteen thousand one hundred eight dollars and fifty-three cents (\$15,108.53)** shall be awarded to the State and lodged jointly and severally against the Defendants. The above figure is based on an internal chart created by the Office of the Attorney General and is reasonable in light of the number of hours worked and investigative costs incurred.

COURT COSTS

73. **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendants are jointly and severally liable to pay all court costs. Further, no costs be taxed against the State as provided by Tenn. Code Ann. § 47-18-116.

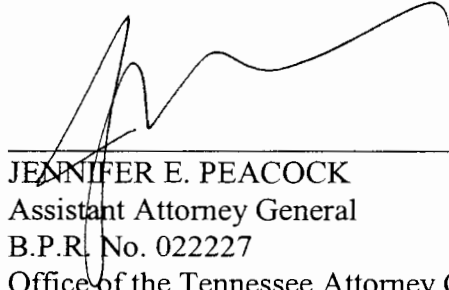
IT IS SO ORDERED, ADJUDGED AND DECREED, this ____ day of
_____, 2008.



JUDGE BARBARA N. HAYNES
THIRD CIRCUIT COURT
TWENTIETH JUDICIAL DISTRICT

SUBMITTED FOR APPROVAL:

ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 010934



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